

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 465 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ALEMBIC KARMACHARI UNION

Versus

ALEMBIC CHEMICAL WORKS CO LTD

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Appearance:

MR RJ OZA for Petitioner

MR KAUSHAL THAKKAR for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner-Union filed this Special Civil Application challenging thereunder the order of Second Joint Civil Judge, J.D., Baroda, dated 21.12.84, passed in Civil Misc. Appeal No.11 of 1985, annexure 'B'.

2. The respondent herein filed regular Civil Suit No.1855 of 1984 against the petitioner in the Court of

Civil Judge, S.D., Baroda. That suit has been filed by the respondent for permanent injunction. In the suit, the respondent filed an application ex.5 praying therein for grant of temporary injunction restraining the petitioner-Union from preventing the respondent-original plaintiff from taking out raw materials and finished goods outside the company premises without damage or any obstruction to the respondent-plaintiff. This application ex.5 has been granted by the trial Court. Being aggrieved of the said order of the trial Court, the petitioner filed Miscellaneous Civil Application before the Second Joint Civil Judge, Junior Division, Baroda. Under the order impugned in this Special Civil Application, that appeal has been dismissed.

3. This Special Civil Application deserves to be dismissed on two counts. Firstly the proceedings have arisen from regular Civil Suit and an order passed in those proceedings, either by the trial Court or by the appellate Court, in the appeal could not be challenged by the petitioner by filing this Special Civil Application under Articles 226 of 227 of the Constitution of India. The Civil Procedure Code has provided remedy against the orders made by the trial Court or appellate Court and the petitioner could have approached this Court only by filing a Revision Application against the impugned order under Section 115 of the Civil Procedure Code, 1908. In view of this fact, this Special Civil Application is not maintainable. Secondly on merits also, when both the Courts have granted interim injunction in favour of respondent, I fail to see any justification to interfere with the said order. It is not the case of petitioner that the orders which have been made by the Courts below are perverse. Even the appellate Court has very limited judicial power of review in the appeal filed under Order 43, Rule 1, of Civil Procedure Code against the order made by the trial Court under Order 39, Rule 1 of C.P.C. These are discretionary matters and when both the Courts have exercised their discretion in favour of respondents, I fail to see any justification to interfere with the same. Lastly the proceedings of civil suit have not been stayed by this Court in this Special Civil Application and by now the suit itself would have been disposed of. It is not a case of any of the counsel for the parties that the suit is pending. Taking into consideration the totality of facts of the case, I do not find any substance in this Special Civil Application and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)